
(1994) 03 BOM CK 0082

Bombay High Court

Case No: Income-Tax Reference No. 446 of 1982

Commissioner of
Income Tax

APPELLANT

Vs

Dhanraj Mills Pvt. Ltd.

RESPONDENT

Date of Decision: March 28, 1994

Acts Referred:

- Income Tax Act, 1961 - Section 202, 207A, 208, 271

Citation: (1994) 209 ITR 851

Hon'ble Judges: Sujata V. Manohar, C.J; B.P. Saraf, J

Bench: Division Bench

Advocate: Dr. V. Balasubramaniam, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Mrs. Sujata Manohar, C.J.

This reference pertains to the assessment year 1976-77. During the relevant previous year, the assessee had to pay a sum of Rs. 24,535 to the Bombay Municipal Corporation as and by way of penalty for the default in making payment of municipal taxes. This amount was claimed as a deduction. The Income Tax Officer rejected the claim treating the payment as penalty. The Commissioner of Income Tax (Appeals), however, held that the penalty paid to the Bombay Municipal Corporation was in the nature of interest or damages for late payment of tax. He, therefore, held that this amount was liable to be deducted on revenue account. The Tribunal has agreed with the Commissioner of Income Tax (Appeals) and held that the amount paid was penalty only in name but actually it was of the nature of interest. From this finding, the following question is referred to us :

"Whether, on the facts and in the circumstances of the case, and in law, the Tribunal was justified in holding that Rs. 24,535 being penalty imposed by the Municipal Corporation for default in payment of municipal taxes was deductible in computation of income ?"

2. Section 207A of the Bombay Municipal Corporation Act, 1888, provides that if the person liable for payment of any tax in respect of which a notice of demand has been served u/s 202 does not pay the sum due within three months of the service of such notice and if no appeal is preferred against the said tax u/s 217, he shall be liable to pay such amount by way of penalty, as may be determined by the Commissioner, not exceeding 20 per cent. of the amount of tax. The question whether this payment should be considered as penalty or as interest is governed by the ratio of our judgment in the case of Income Tax Reference No. 305 of 1982 and others dated March 23, 1994, in [Commissioner of Income Tax Vs. Vegetable Vitamin Foods Co. Pvt. Ltd.](#), . In the present case, the amount which was levied u/s 207A is not in any way related to the length of the default. Only the maximum quantum of penalty is prescribed that being 20 per cent. of the amount of tax. Merely because the maximum penalty is prescribed as 20 per cent. of tax, this does not make such penalty change its character into interest. Although the section does not expressly provide for a notice to the assessee before determination, this is an implied condition in respect of levy of all penalties. Sub-section (2) requires that the order of the Commissioner determining the amount of penalty shall be served on the assessee. Section 208 gives to the Commissioner discretion to remit the penalty payable u/s 207A. Looking to these provisions it would not be correct to say that the penalty levied u/s 207A is not a penalty but payment of interest.

3. Section 471 lays down a table in respect of certain offences committed under sections specified therein and sets out the fine which may be imposed, both maximum and minimum. Undoubtedly, sections 207A and 202 are not listed in that table. This, however, cannot be construed as changing the character of penalty levied u/s 207A into payment of interest.

4. In the premises, the question which is referred to us is answered in the negative and in favour of the Revenue.

5. There will be no order as to costs.